

Region VIII  
Rocky Mountain States

**Regulatory Enforcement Fairness  
Hearing**

Billings, Montana  
July 23, 2004

P R O C E E D I N G S

**MALE SPEAKER:** (Inaudible) business is at the heart of what makes the wheels turn in Montana, the senator understands that, that is why he remains on the Small Business Committee in Washington, and will continue to do so for the future as long as he's there.

But I just want to, again, thank you everyone for coming here. Thank you for coming in from Washington, and all that you do, and Michelle, you're just wonderful to work with. Thank you.

We are around today, but if you ever need anything, please do not hesitate giving our office a call. We do have the eight offices throughout the state and we have a wonderful staff (inaudible) about anything you may need. But, please don't be shy, come up and introduce yourself, I'd love to meet you. Take care.

**FEMALE SPEAKER:** And Linda Price with Congressman Rehberg's office.

**MS. PRICE:** I would just echo the sentiments of the other two gentlemen. We appreciate the fact that you cared enough to bring this to Billings. I know we'll hear some interesting stories. Hopefully, we'll hear some resolution as what to what we can do to solve some of these problems and (inaudible) happen in the future. So on behalf of Congressman Rehberg, thank you for coming in. Thank you folks for (inaudible).

**FEMALE SPEAKER:** And at this time I want to introduce my boss, Mick Ringsak, who's the regional Administrator for Region VIII, who covers Montana, the Dakotas, Utah, Wyoming and Colorado. And we're very lucky, he's a small business owner from Butte. Mick.

**MR. RINGSAK:** Michelle, thank you very much. As Henry the VIII said to his sixth wife, this won't last long.

(Laughter)

I just want to thank you all for coming and tell you that this President that I work for is the most small-business-friendly president we've ever had. (Inaudible) understands things, understands small business. There's a small business agenda (inaudible) heart. He's here for business to operate (inaudible) environment.

The Office of the Ombudsman is responsible for bringing to the attention of Congress and the White House the (inaudible) problems that exist in the country (inaudible) -- the president

and the vice-president and the ombudsman (inaudible).

The strength of the office -- the office is getting out, holding these hearings, and this is not for naught. What you say today will be recorded, reported to Congress, and reported to the administrator of the SBA. The follow-through (inaudible) will have a tremendous impact on the (inaudible). The last numbers I got say that in the last fiscal year we saved small business \$8 billion (inaudible) new regulatory costs (inaudible).

One of the most expensive things about this business is trying to deal with the government requirements. The pension package for small business, the per employee package comes to \$7,000 (inaudible).

With that said, we're very privileged and honored to have with us today, Peter Sorum. Peter has a long and illustrious career in support of small business in government, working in the Ford White House. He worked with Bush One, and he is our Deputy Ombudsman for the agency, and has a very comprehensive understanding of what we need to do and how we need to do it. With that said, Peter. Thank you.

(Applause)

**MR. SORUM:** Thank you, Mick. It's great to be back in Montana. The Office of the National Ombudsman was created in 1996, but it really didn't get going until George Bush was elected president; because as a small businessman, he knew that the federal government and regulatory efforts by the federal government were the biggest burden that small business people faced.

Because he was a small businessman before he became governor, then president, he knew what impact it had, and so when he was elected, he looked for a small businessman to run the SBA because it made sense.

(Inaudible) said before, but it made sense to George Bush, and he named Hector Barreto as the Administrator of the SBA. Hector came from Los Angeles. He had a history of small business. He had been co-chairman of the California committee for the president. The president knew his capabilities and knew his commitment to small business.

So he put him in there and said, you've got two tools over there. You've got the Office of Advocacy, which deals with federal regulatory actions before they are put in place, and I want you to make sure that advocacy is effective in making certain that federal agencies look at the impact of federal regulations on small business before they are actually written in stone.

You've got the Office of the National Ombudsman, and the national office takes action once they're put in place to make sure that they're fair, to make sure that they're handled effectively. And he said, I want you to do whatever you can, because small business cannot thrive in this country unless, and until, the regulatory burden is taken off the small business.

So, Hector Barreto, as Administrator, had to appoint somebody as the National Ombudsman, and he named Michael Barrera, who I work with.

And Michael and Hector had grown up together in Kansas City. They are both small business people. In fact, at one point in their careers early on, they were representatives for Miller Brewing Company in Texas. They would meet every weekend in San Antonio and talk about how they could enhance their marketing programs for their respective areas and territories. They got to know each other very well.

And so Hector went to L.A. and Michael went back to Kansas City and started a law practice. And when the president told the administrator that he had to really put some teeth into this operation, he called on Michael and said, I want you to be the ombudsman. Michael said, well, you know, I was the Miller man and now you want me to be the Bud man?

(Laughter)

Anyway, Michael came in with a commitment and the support of the president and the administrator, to really get out here on a regular basis. Before we took over, you wouldn't have had us here until -- in fact this is the inaugural Montana event, right now. Three years ago they did three hearings. We're doing 22 a year.

We're here today, and then some of the people in this room will be going on to Seattle, and to Portland, and to Salem, Oregon. Our job is to get out and listen to what you have to say, and find out how we can help, and how we can get the attention of federal agencies.

You know, the office was established to establish a more business-friendly environment. That was the concept. Again, we didn't really have any feedback until about three years ago.

Our job is to take your comments and concerns back the administration and to federal regulators that are not represented here today. We have a number -- and you'll hear from them in a little bit.

But, what we do is, we take your comments and we go back and we try and solve them. We don't promise you the answer you want to hear. We do promise you an answer. We do say that we

will get results, and we get results. Sometimes they're not what you want to hear, but we will not leave you in limbo.

You know, the worse thing you can do to a small business guy is say, I'll get back to you. That doesn't work. I mean when you're a small business guy, you've got to get the answers, you've got to know what you're doing right and what you're doing wrong.

Often in small business, we find that they just don't know what they don't know. And it's the job of all federal agencies represented here, as well as the others who are not, to communicate that information to small business.

Again, this president is committed to making small business a thriving, driving force behind this economy. And it's working, it's working very well because we don't have federal regulators going out with this attitude of "gotcha" anymore. It's healthier. Compliance assistance is the byword of this administration.

And that's what we're doing. That's why we're out here listening to you, and that's why we're trying to find out how we can help you.

Again, what we do has some teeth because we rate federal agencies. Some of the folks in Washington are in this room this morning and they're concerned about the grades that the National Ombudsman gives to their agencies when we send out an annual report to Congress.

Because that's our obligation under the law. We have to say these people, these agencies are responsive to small business; these agencies -- some other agencies aren't doing so well. I know one guy in this room who keeps saying, when's that report coming out? When's that report coming out? I want to see it, (inaudible) seen it.

In any event, (inaudible) Tom Hicks over here from the Department of Labor. I had to give him a hard time at every one of these things. I do that because he's the only guy I can count on being here, other than Gary Knott from the IRS. Those guys are everywhere and they're just wonderful. They're very supportive and they're very responsive. They really care about small business people and what their concerns and issues are.

We are empowered to act on behalf of small business, on behalf of non-profits, and on behalf of small communities under a 50,000 population. The reason is because the Congress looked at the environment back in the '90s and said, big business can hire lawyers, lobbyists, CPAs, all the guns they need to go in and fight their case.

A small business guy, he's got to go out there, he's got to hire and fire, and order the inventory and everything else -- run the business, he's got to sweep the floor, and then he's got to deal with all this paperwork stuff.

And, if he's got a problem or an issue where he doesn't think it's right, he doesn't have any place to go. Now he does, which is one of the messages that I want to leave with all of you in the room, regardless of where you came from to participate today; that the National Ombudsman is there for any small business that encounters a problem.

So if next Tuesday you're having coffee with somebody and somebody says, I can't believe what the EPA's done to my business. You can say, hey I just heard this guy from Washington who's in the National Ombudsman's Office who was out here and you can go there, and you can get some results. We hope that you will, at least, take that message.

What are some of the areas that we (inaudible)? Now when a small business is feeling it doesn't matter, in a sense, if it's actually happening, it matters if they think it's happening.

When somebody is being subjected to repetitive audits or investigations, or every time you turn around there's another inspector at the door, that's something we want to know about.

It can be as simple as -- we had a case where the Department of Energy found a guy who had a filling station in Iowa. Energy decided that they were going to use this guy and go out and do a comparative analysis of pricing in the state of Iowa. He's a one-man band, just a (inaudible) gas Station. And so he got the information and he filled it out and sent it in.

The next year they came back to him again. The guy says, you know, this took me 28 hours of my productive time last year. Why do I have to do it again?

And we went to Energy and said, why? Why can't you find somebody else? That's not fair, you're not paying the guy, you're not -- he was a good citizen the first time around, but why should he have to be your lackey? And they corrected that.

So things like that -- again, I'm trying to give you examples of things that might register later on in life, or might register right now. You can testify this morning.

To do what we need, we need to have you fill out a comment form. Comment forms are available on our website, they're available through the district office. You can call our office at 1-888-REG-FAIR -- and please call 1-888, don't call 1-800 because that's a dentist in Florida. He hates me.

(Laughter)

In any event, you fill out a comment form which tells us who you are, what your issue is, what the agency that you have the problem with is. Most importantly, it empowers us to act on your behalf. To go to the agencies within the federal government and say, why are you doing this?

Because once the comment form is filled out, we send the information along with a letter that asks seven questions. It basically says, why did you do it? What are you going to do about it? What corrective action can be taken so that you don't do this again to small business if you didn't do the right thing?

It's perfectly fine if the agency comes back to us and says, the law says we have to do this. The law says we have to do this. The law says this is the way it is.

But if it happens to be an inspector, or some investigator, or some analyst, or some employee who just didn't get the word on what the latest and greatest was, they can find that out and they can come back to us and say, gee, Bill Jones didn't get the latest policy memos, and we made a mistake, and we'll correct it, and we've waived the penalty, we waived the fine. But we need to have that form in place in order to do it.

When you file you have a choice in terms of disclosure and confidentiality. There are some people that are concerned about retaliation. Well, since this administration has been put in place -- one of the other things that the president was concerned about was retaliation.

So we have established non-retaliation policies in 28 agencies across the federal government that make it very clear to federal employees that if they even think about retaliating against an organization that testifies -- I had somebody in Columbus two months ago who testified and she thought that as a result of her testimony that the Department of Defense was going after her and (inaudible) her authority to sell goods to the government. We got that corrected, and we got that employee moved to Keokuk, Iowa.

The bottom line is, that should not be an issue, that should not be a concern, that should not be an issue because retaliation is not part of what we do in the federal government at all anymore. Again, it used to be a "gotcha" attitude, now it's a "help you" attitude because this president demands it.

While we'd like you to disclose -- allow us to disclose who you are. The reason that we do that is because if we can't tell the agency where, and who, and how you are in business, we can't get a sufficient response from the agency because they can't go to the person or people who are involved in the decision and

challenge them as to why they did it.

If you're anonymous, and we've had a few of those cases, agencies can come back and say, well we don't think we did that, but maybe we did, but maybe we didn't. Please tell us. Typically, if somebody chooses the road of confidentiality, we will contact them and say, we really need to be able to disclose who you are. So that's important to the process.

We cannot do anything to stop an action. We can reverse an action, but if the clock is running and you realize that today is Friday, and next Wednesday I have to pay this fine or they are going to double the penalty, or they're going to add interest, or they're going to do this or that, we can't contact the agency and save you at the 11<sup>th</sup> hour.

Again, we can reverse things, but it's just a fact of life that the clock is running, and if you all of a sudden figured it out, we'll try and help you but we can't ---we've got to go ahead and do what needs to be done (inaudible).

We don't do anything with state and local governments because we can't tell the states or local governments what to do. We can only deal with federal actions.

We've got no real power on government contracts. However, we do deal with government contracting issues, especially when there's non-payment or disputes between a small business and a federal agency. And we'll again, ask the question, why?

We don't do loans. That's just not our deal. For loans you have to talk to Michelle or to Betty, because that's not our department.

We have some limitations -- primarily the state and local issues that we really (inaudible). Again, I've said that when you file a comment, give us as much information as you can so that we can act effectively. The more we know the better we can operate.

We're not in a position to understand all the facts. I had a case where the small business only gave me half the information, and on half the information I wasn't able to get it done like I should have been able to get it done because they just didn't tell me -- they told me what they thought was wrong. But they didn't tell me everything they'd done wrong. They blamed everything on the federal government, when in fact they were at fault as much as the federal inspector in that case. We just need to know as much as we can so that we can take effective action.

One of our tools that we rely upon -- because we're a small organization. We only have eight people in our office. We have



50 volunteer small business people that serve on ten Regional Regulatory Fairness Boards. These are the representatives in this region that you can call upon. We rely on them to collect information, to send it to us, to be out in the communities and talk to people and make them aware of our office.

Again, one of the things we have to do is make sure that more small business people in America are aware that there is a National Ombudsman, and that we do have the power and the authority to make things happen.

We rely on these people -- they are appointed for a three-year term and they serve without pay, but they serve because they're committed to the idea that the small business community in America is very important, and small business people, whatever they can do to help, they do.

That information is provided here. It's also available on our website. So you can contact them at any time when something comes up. They travel, they talk to people, they communicate to civic organizations, they gather information for us, they provide us with feedback, they provide us with people to testify at events like this one today. They are very important because we can't do it alone. We rely upon them very heavily.

To put things in perspective, these are just some examples of the kinds of things that we've been able to accomplish, and this is just a representative sampling. The story I like to tell, which (inaudible), it's about the mom and pop convenience store in western Iowa.

The Wage and Hour Division inspector was on her way from Des Moines, Iowa, to Omaha, Nebraska, and she was running out of gas, and she stops in this little town of 500 people -- and since you're in Montana, you know that a town of 500 people, where two roads cross, there might be little store that sells gas, and sells milk, and sells sodas and (inaudible) whatever.

So she's filling up her gas tank and she walks in and she sees this place in the back where they have a little pizza set-up. The husband and wife who own this little store determined that if they invested in a pizza oven that people from miles around would come to get fresh pizza because Pizza Hut, or Dominoes, or any of the others were not going to come into this little town of 500 people and set up a store. So they sold pizza.

This last summer, the kids in the town around summer vacation (inaudible) -- a couple of the employees who worked in this store normally had given up a portion of their time to their children, so their kids would have a summer job, and they'd make some money and provide for their college education

(inaudible).

So this inspector goes back to these two kids that are making pizza dough for that money. She says, how old are you? One guy says, I'm 15, the other says, I'm 14.

The next thing you know, this inspector writes them up for \$16,000 in violations of child labor laws.

The husband says, what is this all about? I don't know anything about this. We're just giving these kids a job for the summer. And the inspector's response was, you should have read the Federal Register.

Now I want everybody who read the Federal Register today to raise their hands.

(Laughter)

Anyway, that was just absurd. So we got the case, we took it to Thomas, and Thomas got it fixed. It's just -- we put some sense into that particular environment because it's just not right. It's not the job of the federal government to go out and nail people. It's the job of the federal government to go out and help people do their jobs better. That's what we're all about.

Even Gary (Inaudible) with the IRS, he's -- the IRS affects everybody and by golly, the IRS has had a significant change as well in terms of the way they deal with taxpayers and taxpayer issues.

They are bending over backwards these days to work with us and to work with the taxpayers to make things come out positively, and try and correct things that are happening in the field that shouldn't have happened necessarily.

You can't get away from everything, but if something happens that's not right, the Taxpayer Advocate's Office goes in and spends a tremendous amount of time sorting through the issues that are raised by taxpayers who didn't know, didn't understand, tried to comply, ran into computer glitches.

I mean, there was a computer glitch that the IRS had where if you paid your taxes today and you owed something from four years ago, your payment today was applied to four years ago, and the penalties kept adding. They work on that kind of thing as well as a lot of other things.

It's an environmental change that this administration has instigated, and it's pushing aggressively on, and it's positive for small business, because small business (inaudible) become --

(Tape interrupted)

**MR. SORUM:** Jack.

**MALE SPEAKER:** (Inaudible) here with the Food Safety Inspector Service of the USDA. We are (inaudible). Just real briefly, in our (inaudible), we (inaudible) Wyoming, North and South Dakota, (inaudible). We were at the last meeting (inaudible) Rochester. Again, we (inaudible) we take it seriously.

As a result of the meeting a while back, (inaudible). Our agency -- we regulate people (inaudible). (Inaudible) initiated over 200 full time employees that (inaudible) to assist (inaudible). Four of those people are here with me today, Roger, Pat, (Inaudible), Jeff. They've been in those roles for anywhere from (Inaudible).

The three other people I have with me (inaudible) Jim (inaudible) and (Inaudible) here on the end. He's a supervisor who's responsible for overseeing the (inaudible).

We have about 300 very small (inaudible), so (inaudible), and that's why we're here. (Inaudible) go back and look at it (inaudible). There are issues that (inaudible).

**MR. SORUM:** Thanks, Jack. Tom, you're up.

**MR. HICKS:** Good morning, my name is Thomas Hicks. You've already heard from Peter about all the great things we can do in the Department of Labor.

(Laughter)

I'm with the U.S. Department of Labor in Washington. I'm in the Office of Small Business Programs. My responsibility as the SBREFA Unit chief is to first of all, if you file a comment -- we have a concern on your issue if you are a small business.

It comes to my office. It goes to the assistant secretary for a response, we determine if the response is adequate, then it goes back to the Ombudsman's office.

We work with the five major enforcement agencies within the Department of Labor. They are OSHA; the Employment Benefits Security Administration, that deals with health/benefit issues; WHD, which deals with wage and hour; and the Office of Federal Contract Compliance; (Inaudible), which deals with the training programs; and MSHA, that deals with Mine Safety and Health Administration.

Each one of those offices has what we call SBREFA contacts that deal with issues that might come up regarding small businesses that feel they've been treated unfairly. As Peter indicated, if we get several comments -- if we're not happy with some of the results from the field office, we try and get them changed.

We try to make the people out in the field responsive to

small business needs. We have our assistance units -- each one of those enforcement agencies has a compliance assistance unit. They have a toll-free phone line.

If you're a small business, you don't feel comfortable calling an enforcement agency because you think they have a caller ID on you -- (Inaudible) knock on your door, you can call our office, we're not an enforcement agency.

If you have an issue or concern, we take that concern to the enforcement agency, get a response for you straight back, and there is no contact between you and the enforcement agency.

I'm glad to be here in Montana, and I think that finally I can say I've covered all 50 states.

(Laughter)

It took us five years, but we've covered all 50 states. We also have a representative from the Wage & Hour Division, and I'll give her a chance to talk to you about what's going locally.

**FEMALE SPEAKER:** I'm (Inaudible) with the Wage & Hour Division here in (Inaudible), and we do represent (inaudible) small business (inaudible). (Inaudible) we have a website page (inaudible). (Inaudible). We also have a toll-free number so you can call (inaudible) federal regulations and that's 1-866-4US-WAGE. (Inaudible).

**MR. SORUM:** BLM.

**MALE SPEAKER:** I'm Martin (Inaudible) with the BLM. I actually work for the Washington office (inaudible). I'm a procurement analyst and work (inaudible) policy for small procurements (inaudible).

Our (inaudible) is chief of the contracting office (inaudible). I should say (inaudible) procurement chief. (Inaudible) but if you do have problems, at first we talk to the (inaudible). I work with all congressional (inaudible). Also here with me today is (Inaudible) Henderson who is the contracting officer (inaudible).

**MR. SORUM:** (Inaudible).

**MR. BENES:** Good morning. I'm Stan Benes from the deputy (inaudible). (Inaudible) more about the Small Business Administration (inaudible) priorities are community support (inaudible). Thank you.

**MR. SORUM:** I'd like to do that -- instead of that when people testify -- they know who they're talking to because some people get a little apprehensive. If you know who your audience is it's a lot easier. That's why Jay Jensen is now going to

tell us about an issue that he's got a concern with. Jay.

Why don't you go up here so everybody can hear what you have to say?

**MR. JENSEN:** Thank you, Peter. My name is Jay Jensen. I'm senior vice-president with the Yellowstone Bank here in town. The Yellowstone Bank is what is referred to as a community bank. We are a locally-owned bank; we've been a locally-owned bank since 1907.

Our goal in business is to serve Billings and the south central Montana area. As a locally-owned bank, actually any bank, we're subject to extensive regulatory review. We have federal reserve examinations, we have state banking examinations, we have EDP examinations, we have compliance examinations, we have quarterly (inaudible) reports that we send in to the FED. So we're not without plenty of supervisory review already.

A couple of regulations that impact us directly, which in turn impact the customers we serve, small businesses and consumers, are what's called the CRA, Community Reinvestment Act, and HMDA, Home Mortgage Disclosure Act.

As a smaller bank, community-owned bank, we have been fortunate to grow, which we thought was a blessing until we hit a certain asset size, which was \$250 million. When we hit that asset size, the regulators determined that we were no longer a small bank, we were now a big bank, and as a result, the compliance issues in those two areas, the CRA and the HMDA, virtually exploded.

If a small business comes to me and asks for a \$10,000 loan because they want to buy a service truck for their business, that loan is subject to CRA reporting. We have to obtain from that business and report to the government, extensive information.

We have to tell them the loan size, whether it's an ag. business, not an ag. business, whether we originated the loan or somebody else originated the loan, the five-digit MSA number, the two-digit state code, the three-digit county code, the six-digit circumspect code -- all this when Larry Olsen wants to come in and buy a \$7,000 pick-up truck for his business.

Now we're not opposed to providing reasonable information but when you put that burden on us, that impacts back to the customer. It's a cost to us, and all of you in business know that those costs are ultimately passed back to the consumer.

That type of thing also applies to HMDA, Home Mortgage Disclosure Act. If you want a \$7,000 deck or patio on your

home, we have to do that same type of reporting times about three to the federal government for you to process that loan for you to put your deck or your patio on.

It's burdensome. It's not that it hinders us that much, but you need to recognize the costs pass ultimately to the consumer-businesses and consumers (inaudible).

What I would ask to be considered would be to raise that threshold of \$250 million. We're not a big bank. We're not a Wells-Fargo. A \$500 million or a billion dollar threshold is very reasonable. If you're familiar with banking statistics, that is not a big bank, and would allow us to serve our customers and the community much better. Thank you.

**MR. SORUM:** Thank you, Jay. Just so you know, I'll take that comment back and I will get action on it, and we'll see what we can do. In this case it will be a joint effort between our Office of Advocacy, which I mentioned earlier deals with policy reform, and our office, which deals with policy that is in place. We'll take it back and see what we can do to make the country better for all the small banks in America.

By the way, I should say right now, that if we get an answer from a federal agency and we send it to the small business and the small business says, wait a minute, they missed the point. They didn't get the facts right. What happened is misrepresented by the people who deal with (inaudible) investigated or whatever, the small business can come back to us and say, wait a minute. We'll take it to the agency and say, come on, guys, (inaudible).

**MR. KINGTON:** I kind of feel like -- did anybody read the Wizard of Itch (inaudible)? But I kind of feel like that cartoon. However, for today I'm looking at the SBA enforcement (inaudible), and I feel like the one-armed juggler.

Two people were talking -- you have USDA here on this side and the SBA on this side -- about the convention tonight, what are we having for entertainment? They say, I think we're going to have a one-armed juggler. The guy from SBA looks at him and say, what's he juggle? He says, chainsaws. Well, that's how I feel today.

(Laughter)

For the record, my name is Al Kington, and I appreciate the opportunity to participate in this meeting --a hearing, actually.

I am the owner of Kington Management Systems, a natural resource consulting service based in Helena, Montana. For 22

years this work has involved working with family-owned ranches, independent miners and small sawmills.

Prior to that time I spent ten years in the corporate world as a resource manager, and prior to that ten years I spent ten years for the state of Montana as a supervisor.

The purpose of my participation in this meeting is to attempt to bring attention to a problem of bureaucratic and political apathy toward the small sawmill business in Montana.

The exact (inaudible) we'll focus on will be similar to situations experienced by independent ranchers, miners and (inaudible) businesses who are dependent on federal money for resources. Lip service may be a term that comes to mind.

The 1990s presented the timber industry as a Whole, with federal timber supplier reductions and uncertainty. The SBA set-aside program worked relatively well when the Forest Service timber sale program was at predictable and adequate levels, and the SBA procurement personnel were visible and available.

I was under contract with the Independent Forest Products Association when Reg Fair was being introduced in Congress. The IFPA was a national association, which represented small sawmills throughout the nation. They aggressively lobbied for the bill with the hope that it would provide recourse for unfair corporate competition and flexible regulations and policies.

The following chronology reflects our problem with the SBA set-aside timber program, which is administered by the U.S. Forest Service.

In 1994 -- and I've included in the testimony a packet of letters. The small sawmills emphatically participated with the U.S. Forest Service and the SBA Interagency Small Business Working Group to recommend changes to the SBA set-aside program.

A recommendation was made to eliminate the trigger mechanism that is provided to assure that balance exists between timber (inaudible) and large and small businesses, under an adequate timber sale program. The letter reflects the predictable consequences that an inadequate timber supply would have on small business sawmills.

The report referred to in this letter has never surfaced. When I enquired as to its status this year -- I could not find it in my moldy, old files (inaudible) -- the Forest Service had no record of the report that indicated that letter was a precursor to. And in fact, they didn't have a copy of the same letter that I had, which was their (inaudible).

In that report, as noticed on page two, we made the statement to that committee, again it was the Small Business

Committee and the forestry committee -- we made this statement.

"We appreciate your recognition that in helping small business survive in the near future it is absolutely necessary to adopt timber sales set-aside program to the changing federal timber sale program in the West. As stated, many of our members will not survive the next several years unless the existing small business set-aside program is revised to meet changing federal timber sales (inaudible)."

That's in the 1994 letter of which the small businesses really came to bat and participated in that program.

In February of 2000, we went to Congress and I will say that our delegation in Montana, including the governor's office, have been doing very well as far as supporting -- trying to put our initiatives forward on it. From our standpoint, it's probably journeyman work. They hear -- they try -- as I heard Charlie here this morning, we like to meet with you.

But we're having a problem with anything coming out of the other end of the (inaudible) reflecting in our business in the state.

During the spring of 2000, IFPA worked with members of the Montana congressional delegation to address the continuing dilemma of dramatic reduction in federal timber supply and the impact on the small sawmills, as well timber dependent communities.

A recommendation was made to initiate legislation, or if possible, change policy, that would provide for the first timber sales each year to be offered to the small business people. And that's addressed on page five of the report.

Since this was an election year, apparently this recommendation was shelved due to other priorities or (inaudible).

The urgency of the problem was emphasized, again on page five of that report, in 2000. You can read the sentence. It says, "Such a program is needed if the remaining small business purchasers in Montana are to have any hope of remaining viable purchasers of federal timber." That was in 2000.

In January of 2002, the replacement for the SBA procurement forester had not been to Montana since he was hired two years prior to that. It was due to a lack of travel funds I was told, so I sponsored him, bringing the individual from Seattle to Montana to meet with the independent sawmill people I work with, as well as the agency people who were involved in making the decision to administering the SBA program.

I sponsored three workshops and provided transportation and



meeting facilities so that the major players could meet with SBA procurement forester. It was ironic because he had never met the people at the regional SBA office, and they didn't have a clue he existed.

As recently as last week, I went to Michelle and (Inaudible) on that individual. But they didn't know where he was.

And so participation in our sessions was good with the agency people that worked with the program. We had the SBA guy there and we thought this is really going to work.

Well one of the things that happened out of that was that CEs, which is categorical exclusions for small timber sales, finally passed this year. So within two years some (inaudible) generated in 2002, came to fruition.

Between 1994 and the present, 11 sawmills have closed their doors and over 600 people have lost their jobs. This is in that period that I just tried to chronologize for you, 1994 to now.

And small, rural communities are reeling under the economic impact. My presence at this hearing reflects the attitude that before the dozen sawmills, small sawmills we have left in this state turn off the lights, we're going to try Reg Fair and see what comes out of this platform. I appreciate the chance.

(Applause)

**MR. SORUM:** Thank you, Al. Clearly you should know that as a result of this, that the SBA is not outside the loop of the National Ombudsman's concerns for small business, and when there's an SBA issue, we go to the SBA. We grade the SBA just like we grade every other federal agency and we hold the SBA accountable. I can't answer your question today, but hopefully I can answer it when I get back and find out what's wrong. I appreciate your taking the time. Phil Perkins.

**MR. PERKINS:** Hi, thank you very much for having me here. Thank you, Linda Price, thank you folks. I'll try to stay within the five-minute limit (inaudible).

My problem has to do with OSHA. They raided my business in February of this year. The raid, I believe, was precipitated by a complaint viewed to be anonymous --well, to me it was anonymous -- by an employee that terminated his relationship with my company when he was confronted with theft that he had done.

Within a week, an OSHA inspector was on my doorstep. He had a list of 10 items, which just seemed really tied to that employee.

What I believe is going on at the Billings' OSHA office is

that there is a culture of dishonesty toward employers and there's a real, as Pete said, a "gotcha" attitude, not a "help you" attitude.

I'll give you a little background on our company.

We're very tiny. If we went away, it wouldn't hurt anybody too much. We have been in business about seven years, and in seven years we've had two medically treatable accidents. One was a scratching of (inaudible), which happens even though you have the glasses on.

I require my guys to wear glasses, and I provide them glasses for the specific reason that I don't want to be responsible for a guy having an eye problem. My reasoning for that is, when you work for a wage and you have to buy your own glasses, you're not going to buy them as often as (inaudible), and they end up on your floor or desk and you can see that they are scratched. So that was one.

And then another item that happened in the seven years was a guy splitting his lip by hitting himself accidentally in the (inaudible). That was in seven years.

When the inspector showed up, he told me what he was there for. He told me that he'd like to go in and he asked my permission. I said, well that's fine, but we're on a deadline. We work.

I looked over his complaints and I said, would you like to take a look at the complaints, and then come back at another time? He told me that I had no rights, and that was all. No rights whatsoever. That's -- even OSHA was citing (inaudible), that's not true.

Anyway, I'll get into a couple of specific things. One specific lie that I believe was told about my company was we had a problem with string relief in pendants. You know what a pendant is? A pendant is a small extension cord that comes out of an electrical box over a work area.

I suppose there is a remote possibility that you could shock yourself if you pull it out. I don't know how, because pulling out is (inaudible) dead. But that's a regulation.

Inside that box (inaudible) in these cases is a device to hold the cord from pulling out. Well in your (inaudible), blue-collar labor environment, you know, guys aren't going to pull that apart with two hands, they'll pull it off with one hand. So if there's not (inaudible) in that box, the cord is going to come out very shortly, because the wires, when they're tied together up there, come off -- will come apart. They were used like that for months.

Well I offered to open the box for the inspector --all the boxes, which was actually my way of kind of being friendly to him, because I had already worked on those things because we had been in the facility for a while and I knew that there was (inaudible) up there.

He cited me for having no (inaudible) holds after the inspection, and he refused during the inspection to let me open up the boxes for him. He has since denied that to his supervisor -- well, he denied it to the supervisor in Denver, but he admitted it in the informal conference in front of Randy (Inaudible) from Congressman Rayburn's office. That's just one example. There are others.

They claim that we didn't have ventilation in an area where we painted. They didn't even ask. They just cited me for it.

They claimed that we were going to have problems because we had gas bottles -- welding gas in an area where they could be broken open. What he was referring to was two gas bottles that were empty.

Now here's the hazard with the gas bottle. A welding gas bottle -- inside a welding gas bottle when you get them refilled, there'll be between 800 to 2000 lbs. per square inch depending on pressure inside that bottle, depending on what kind of gas you get. If they break open, it's not a leak, it's an explosion and people die that way. So there's a good reason for the regulation.

He found two bottles that were not tied or protected from anything. He said something could hit them and make them break, which was -- the steel is a quarter inch thick; it can take a lot. I told him that they are empty -- no pressure, therefore, no danger. I still got cited.

Now I'll stop on the fact I think (inaudible) be very deceptive, deceptive to me and they were deceptive about me, with one last example.

I'll read to you an answer from the Denver office of OSHA. It says this, "Mr. Perkins indicated that OSHA issued a citation for failure to provide string relief on pendant cords after he had extended an offer, a compliance offer, to open the electrical boxes to see if the spring relief devices were present inside the boxes. The inspector does not recall such a --

(Tape interrupted)

Which is good, but what kills me, personally, just on a human level, in a spirit of cooperation, retreating from a lie is not cooperation. (Inaudible), it's embarrassing (inaudible).

Finally, one last thing that happened (inaudible) is that - well, there are two things. There was, I believe, harassment.

At one point I was standing -- the field inspector wanted to know what a certain machine did so I showed him some of the parts made by that machine. It was a forming press. (Inaudible) a wall of bins. He stood there and asked me, what (inaudible) is this part? What kind of part is this part? What kind of part is this part?

After ten minutes of that I asked him, what does this have to do with product or safety?" And then he went, (inaudible).

Another thing that I think indicates harassment, they required me and cited me for not starting the spindle on our milling machines. The same inspector, three months earlier, inspected another machine shop and did not make the same requirements.

(Inaudible) a third thing that I think is going wrong in the OSHA office here is that there's -- some of the people are not very competent for what they do.

The industrial hygienist was worried about the breathing of smoke so she told me that the regulation that I have to worry about is (inaudible) room where there is welding going on. I have to make sure they're 10,000 sq. feet from that room.

Well, that didn't make a lot of sense to me because you're worried about parts per million when you're breathing (inaudible). So I asked her, do you mean square feet or cubic feet? I had to explain to her the difference. She looked it up and told me the (inaudible) is cubic.

The field inspector -- well, I've gone way over my time. The field inspector (inaudible) the same sort of thing. He didn't know (inaudible). Thank you.

**MR. SORUM:** Do you have that in writing so that I can take it to Thomas and make it happen?

**MR. PERKINS:** Yeah.

**MR. SORUM:** Thomas has heard it and he will act on it, I'm certain. (Inaudible). I've asked Jay Jensen to read another testimony from a bank in Wyoming that could not be present today. Would you, Jay?

**MR. JENSEN:** You'll be hearing more than you care to about CRA, but bear with me if you would. Barton Neville is the senior vice president of the Hilltop National Bank in Casper, Wyoming, a bank similar to ours in size -- about \$260 million. These are his comments.

The asset limit for streamlined CRA examinations currently

is \$250 million. When our community bank assets exceeded the limit about 18 months ago, the burden of compliance grew substantially, from requiring a limited amount of time -- one officer complied with the required data about one hour per month when we were \$100, \$250 million.

We now are utilizing the efforts of two officers and a clerical person to file the data weekly on loans made by every lender in the bank. These three people's time --ten hours per month, not counting end of year reports. The loan officers fill out a data sheet on every loan made today, which is then manually entered into a loan accounting system.

CRA's purpose is to ensure banks are investing in the community. The reality is that community banks cannot survive by redlining or discriminating against anyone. Competition is too fierce and loans are too hard to obtain in small communities.

Continuation of new regulatory burdens will make small banks unable to comply, and they will need to sell out to large, regional banks.

Some regulations are important to the country, which is anti-money laundering and terrorist financing, but I believe CRA is not needed for small banks.

**MR. SORUM:** Thank you, Jay. It's important that we have that read into the record, just for the information of all here today. There will be a transcript of this entire hearing posted on our website so that anybody who wants to go back and refer to it, as soon as we get it transcribed, it will be there.

Chris Dimock with OneEighty Communications.

**Mr. DIMOCK:** Thank you very much for sponsoring the forum, and thank you for allowing me to talk. My name is Chris Dimock. I'm president and CEO of OneEighty Communications, Inc..

We're a facilities-based telecommunications provider, and one of my challenges this morning is that there's about 50 hours of background necessary for five minutes of testimony, but I won't bore you with that. Suffice it to say that we, as a company, are a telephone company.

We're a small, competitive telecommunications carrier, and the competitive telecommunications industry was created with the 1996 Telecom Act. The intent was to start fostering greater communications in telecommunications throughout the nation after the split-up of the Bell operating companies. We've had a limited number of companies with essentially geographic monopolies.

Congress wanted to change that so that we actually had more competition and that the free market would determine pricing structures and the free market would determine who the winners and loser were.

So the 1996 act came into being. As part of the 1996 act, there was a tri-annual review. The objective would be that every three years the Federal Communications Commission would review how the act was doing, and whether it was accomplishing it's purposes or not.

The most recent tri-annual review was released in the early part of last year. And essentially, one of the findings from the Federal Communications Commission was that they felt that the concerns relative to impairment of facilities, which means the ability of a small carrier to rent, under regulation (inaudible) from, in our case, Quest, the regional (inaudible) operating company, they felt that impairment decisions should be sent down to the public service commissions.

In this case, the Public Service Commission in Helena would make some decision about whether there was adequate communication in the state to allow the free market to operate, or whether the access to (inaudible) that we could (inaudible) request, could still be regulated.

In our opinion that was a smart decision because certainly, the Public Service Commission in Helena, has a much better sense of what communication's competition looks like in Montana than Chairman Powell and the FCC in Washington. So we were happy to see that decision.

The D.C. Circuit then overturned that decision and remanded it back to Washington, and said that the FCC, in fact, should oversee impairment and not the public service commissions. The FCC has essentially abdicated its own decision by not choosing to appeal the overturn.

And so we're now in a situation where we've got this regulatory uncertainty because the FCC will not be clear about what facilities should be available to small carriers, and the D.C. Circuit will not be clear about their intent about what facilities should be available to small carriers. So nobody is clear about what facilities should be available to small carriers.

Well we're a small carrier. We use those facilities. They're an essential part of our business, of our business plan. We have spent a lot of time with the Federal Communications Commission -- the individual commissioners and as a whole -- trying to get some clarity because we don't have a huge war chest and can't kind of retool our business plan on a dime based

on regulatory fiat.

So we're essentially in a position where we don't have a significant threat to us in the immediate term -- the decisions that they're making obviously have a huge impact on the long-term future of competitive telecommunications.

Our concern is that Chairman Powell and the majority in the FCC believe that because friends in MCI and AT&T are out there competing against STC, Verizon, and Quest, that therefore, you have competition.

And our fundamental concern is that we don't want the FCC to unintentionally allow small carriers to be a victim of their perception that there is adequate competition throughout the nation.

People who live in Montana understand that there is Quest, and then there are all these rural (inaudible). So you have Mid-Rivers Telecom, Three Rivers Telecom, you know, Ronan -- all the smaller, rural (inaudible) -- and you have 180 Communications, which is the state's only facilities-based small, independent telephone company.

We do nothing but telephone and broadband service. We don't have a rural net to fall back on. We don't take any subsidies. We are simply a commercial telephone company.

So our fundamental concern is that there is inattention at the FCC relative to small, facilities-based carriers, and we may, in fact, become the victim of, what I perceive, as an oversight on the part of the FCC in their zeal to declare free market competition.

One other quick issue in that regard, as an example, there is a rule called pick and choose. My company's access to leasing facilities from Quest is based on an interconnection agreement, called an ICA, Interconnect Agreement.

There has been a regulation that says that the carriers can look at any other interconnection agreement and pick and choose pieces of that agreement, and then assemble those into their own agreement, and then that agreement is the basis for our future interconnection with Quest.

The FCC has decided to withdraw pick and choose as an option and they are suggesting that we can then negotiate toe-to-toe with Quest, or we can opt into somebody else's interconnect agreement in whole.

Well, that's fine. If there were 25 other small, facility-based carriers in Montana with similar business plans, we might be able to opt into one of those in total. But the fact is that we can't opt into MCI's plan that requires, you know, 500,000

lines a month in order to get a contractual agreement for a reduced wholesale rate.

We look around the state and say, what other competitive carriers are there here that we could opt into their agreements on, and there aren't any that are similar to us in business plans.

So whereas again, Chairman Powell suggested that free and fair negotiations are appropriate, my analogy is if you create level playing field, and you have a 600 lb. gorilla and a mouse, the outcome is essentially a fait accompli at that point.

The notion that we will fly down to Denver and have a free and fair negotiation based on our volume ability is just ludicrous at this point.

My fundamental concern is that the FCC believes that because you've got these behemoths in telecommunications, that you have free and fair competition. Yet there are small, effective competitive carriers throughout the country that really are driving competition, and if we become an unintended casualty of an FCC oversight, I think that would be a travesty for the consumer and the small business alike. Thank you.

**MR. SORUM:** Thanks, Chris. Can you summarize that in writing so I can take it to the FCC?

**MALE SPEAKER:** Okay.

**MR. SORUM:** That would be very necessary and very appropriate. I thank you.

Now my new best friend in Montana, Darryl Olson, has a number of issues that he wants to raise, and I've saved him until last because I wanted him to have the opportunity to raise each issue one at a time. He's very articulate and knows exactly what he wants to get done, and so here he is.

**MR. OLSON:** I'd like to say thank you for giving us the opportunity. Many of you know me through the agencies as kind of a boisterous small business advocate.

Some of the issues I'm going to bring up today are -- some are very specific agencies, and some are inherent overall issues we're seeing in Montana. Many of them, dealing in Montana -- small business in Montana is a micro-small business in other regions of the country.

That's an issue that I'd love to bring up and like to get changed. (Inaudible) industry -- \$250 million bank may not be a very big business in other areas, but to us that's a large business. So as I go through these, I'll try to be as brief as possible. Some I can be brief, some are a little bit larger.



I'll go ahead and start off with one that's pretty easy, and (inaudible) MDT. It sounds like I'm picking on MDT, which is a state agency that's being forced by federal agency regulations -- because there's federal funding involved, it's causing me to pick on MDT, which I'm really not picking on MDT, okay?

Anyway, starting this year, MDT -- in my industry as an environmental consultant, came out with a requirement that when we put in a proposal for a project for MDT, we have to have a FAR overhead rate on it. These rate audits cost us a minimum of \$3,000 to \$5,000, and ours in particular, was like \$4,500.

This was just to put in a proposal for work you don't even know you're going to get. For every sub-consultant that works for us, that's going to get \$10,000 worth of work as a sub-consultant, had to have the same FAR (inaudible). So if we were going to give \$10,000 worth of work, they had to pay for a \$5,000 audit.

This talk about retribution -- I brought this up through MECIDA, and it got back to MDT and I was nervous. I mean this -- believe it or not there is retribution. No matter -- as much as you'd like to say there's not, you do have retribution.

My complaint is, right now we just happened to get contracts and we're actually going to recoup our costs for that. But there are many companies that did not and are not going to recoup that cost.

So right now, if I'm bidding on a \$30,000 project, and there are many of those that are put out in my industry, I'll never, ever make that audit (inaudible), never. I have to make \$100,000 -- to get \$100,000 income into my business before I'll ever recoup the profit that I lost because that fee costs us that much. And it's even worse for my sub-contractors.

So I guess I'm asking for -- and this is through the Federal Highway Administration requirement -- it's very easy how to solve this problem and GSA does it. They have regional rate schedules -- very easy.

For a contractor to come in, all they'd have to do is set a rate schedule, you know, for this region, which GSA already has. If we came in like 20% higher, 20% lower, at that point they can say, hey, you guys need to justify your overhead rate.

But to force us to have these audits, it's just ridiculous. And on small businesses -- I know many small businesses that don't even compete on these issues with MDT contracts because of this issue. That's one of them that I've got in writing, so I'll go ahead and submit that. I think that direct action needs

to be taken immediately.

Once you get in, and once you get a contract, there is a clause -- you have a choice when you sign that contract, and in my case it was for a two-year term contract. They did say, there's a check box in the contract. If you're willing to lock these rates in for a set period of time, maybe upwards of five years, we will not make you have an audit. But if you don't want to have a standard escalation rate because of the economy, you'd have to get a FAR audit every year unless you're willing to lock-in at those rates.

Now I'm going to pick on BLM. I know Gloria knows me. And I'm going to pick on BLM on a couple of issues real quick.

One just came to mind while I was sitting, and I'm going to have to write it up. We're talking about size standards in this (inaudible) particularly. We have (inaudible) codes, which are categories that basically your work falls within.

And in the environmental consulting industry, there are two (inaudible) codes that I work within, and one is environmental consulting, and I don't remember the exact title of the other one.

But the size standard in environmental consulting, to be a small business you cannot make more than six million dollars a year over a three-year period; the other one is 500 employees.

Well agencies utilize this -- there are "beltway bandits" as we call them, these companies that keep at 499. They utilize these and they've got a strong lobby. So what's happening is that these numbers were being interchanged way too easily.

I'll give an exact instance right now. The BLM office out of Denver is going to be procuring for an 8a environmental consulting contract for the region. It came up -- the first solicitation came out as a six million dollar-sized (inaudible). Miraculously two weeks later it was rescinded and came out as a 500-person size standard.

Now that just excluded -- if I had a 500-person business in Montana, I'd be one of the largest businesses in this state. We cannot compete. We've had to withdraw from many agency contracts, or solicitations, that are 500-person standards. It's not right. This is environmental consulting but it's too easily interchangeable.

So we know what happened. The beltway company a 500-person standard. Guess what, we don't even bid on it. It's exclusion.

Moving on to the next issue -- and I know Laurie in particular -- because I've had many conversations with her about this. I think it was back in February or March, we were at the

(Inaudible) Big Sky Economic Development Conference, and at that point, you told us that your regional -- this regional office was going to start using the GSA schedule exclusively. We weren't GSA schedule at that time. We are now. Actually next week our contract will be final.

But when Laurie did that, what basically happened -- and I know in the state of Montana, to my awareness, there are only like three companies that have GSA schedule that do the same work that I do. They're Montana-based firms. All the rest of them are the bigger guys. Why is that? Can anybody tell me?

To get your GSA schedule contract costs a minimum of about \$12,000 in man-hours and resources --upwards of \$20,000 to get this. And this is just in-house stuff. That's not paying a consultant. If you look at the man-hours -- I've got people going through this process --\$12,000 is big-time for our small businesses in our state. It has to go through that process. GSA is wonderful. They've got a lot of resources but it still doesn't offset that issue of -- it costs a lot of money.

Therefore, what is happening is by BLM using this GSA schedule exclusively, guess what, I know about 20 small, one, two, three-person firms that can't afford to get it so they are now excluded from bidding on any BLM projects out of our region.

These people are the best qualified to do that. These people know the country. So who's getting the work? Out of state firms that are coming in -- and happen to come up to speed, bringing it up to speed.

Now they say, go sub to them. That's great. I hear that often, go sub to a small business. There is no teeth in the sub-contracting requirements of any agency that I've seen to date. No teeth.

I have been used and manipulated by the best companies in this state. They use our credentials and excluded -- they'll use your credentials and there is no teeth.

I can file a complaint but there's no teeth for them to go back to those agencies and say, you have to use it. You put their name on a contract, guess what, you use it.

There's a famous one, I'm not going to name him, here in the state. This is one of our largest companies that does it and it's alienated numerous small businesses. They'll eventually catch up to them but right now they're still doing it. I just got burned recently by them.

So the GSA schedule is a great tool. I'm going to go to Laurie next week and ask her -- because we are on the GSA schedule I'm going to say, Laurie, here I am. Please don't stab

me.

I think it's a good tool. It's something that we decided as a business we had to do but I'm going to tell you right now, it has its place. If there's a timeline, yeah I can understand using it.

If you have a timeline within -- technically you've get it out -- and it really doesn't shorten the timeline that much, I mean to be honest with you, because they have to compete between the GSA schedule people, so they could have still (inaudible) up.

You know, I can see if there is a continuation of a contract. If you've got a contractor you're working with on a project and you need to issue a new contract to finish up, those kinds of issues I see as good.

But if you're going to compete, give access to the rest of the small businesses because there's a lot of us that can compete on a project-by-project basis, but can't necessarily compete when you lump all these big contracts together. You really need the services and it's not really for our region, it's not real practical. That's enough for BLM for now. I'll try and remember (inaudible).

Okay, next one, U.S. Forest Service. And I'm not going to pick on you directly, I'm actually going to compliment you.

**FEMALE SPEAKER:** Wait a minute, that's not fair.

(Laughter)

**MR. OLSON:** Well, I'm going to pick on his upper echelon. Right now, coming out of Region I -- Region I is one of the largest, if not the largest -- I'm not quite sure about that -- contracting areas within the region.

Region I proposal requirements are huge, huge issues with us in small business, especially within our region. Right now, if Region I puts out, say an IDIQ contract, which they've done over a period, and I'll talk about those next, it costs us a minimum of \$7,000 to put a bid together.

We just put a bid together for content analysis. It cost us, internally, about \$25,000 to put this proposal together for a small business set-aside. Guess how much money I've got to make to make \$25,000 back in man-hours and resources, or I'll never make a profit on it?

This thing is a four-volume set, four volumes, and we had to do a project for them. I kid you not. We had to actually do a project. We had to provide them models, submittals, and plans -- and staffing plans and lists by people and methodologies. That is ridiculous.

The company -- we were a sub-contractor to a large firm on that. They budgeted \$100,000. A \$100,000 proposal. It's a \$25 million contract. Don't get me wrong -- it's one of the Bush outsourcing requirements that's coming down.

But what I'm saying is, as a small business set-aside we cannot -- that proposal requirement is the exact same as a full and open. We cannot be required to meet the same as a full and open company -- I mean big business. It's just too much on our businesses, especially at a regional level, to have to put into. We have to do it if we ever want to get one.

To be quite honest with you, you have to learn to adapt. It caused our overhead rates to go up significantly because we have to try to build that in. What does that do? It results in a federal agency getting charged more money. It's just a pass-through, I mean, it is.

But it also means that me, as a small business, I have to allocate -- now the big company in particular, had seven full-time people working on this project from last fall into February, and that period (inaudible). I don't have seven people, as a small business.

Now here's where I'm going to compliment this gentleman. The regional level proposal requirements that are coming out of Custer National Forest, Gallatin National Forest are doable. You want to find out if you have qualified people.

Now don't get me wrong, I'm not whining about that, but it becomes excessive at a certain point. The 255s -- you know, if we have to do 255s, 254s (inaudible) that's -- we can live with that in small business but the big stuff is ridiculous. This is countrywide, I mean, with other agencies too.

Next, here comes my big one. Everybody knows (inaudible), oh yeah, I think that's what they call it.

**MALE SPEAKER:** Bundling.

**MR. OLSON:** Bundling, there we go, okay. The administration I know is very hot on project bundling. Well, guess what, the agencies figured out a way around that, and it's impacting us directly in Montana, or Montana firms are paying dearly because of this bundling.

What is it doing? How is this called IDIQ contracts? Indefinite delivery and indefinite quantity contracts that every federal agency is using. Every federal agency that I have seen. What do they do? Why do they do this? Well, their budgets are getting cut; their personnel are getting cut. They can't afford to go out and procure every single little project. They can't, they don't have the staff.

So what they created was in IDIQ contract. So when these IDIQ contracts come out, they'll generally put it out region-wide. They will generally have anywhere from two to six contracts, divided maybe -- there'll be two full and open, there'll be two small business, two 8as --they will do this.

These contracts are so broad-based, like the environmental consultant, the requirements to go in on these; you have to be a big business. They want (inaudible) and everything in one shot.

So what we end up doing in Montana is we try to form consortiums of smaller businesses that can actually meet that.

Okay, so now they put out this IDIQ contract --whoever wins it -- and the size standard sometimes -- there we go back to back to the 500 that they put in (inaudible). No Montana business is probably going to win that contract unless you're a sub. They put these out. They offer these contracts up anywhere from two to five years.

And I went down to Mary Clark particularly, and I said, Mary, I want to get some work. You know what Mary said to me? We don't have a contracting mechanism to get you work unless you're GSA schedule, 8a, Hub zone, dada dada dada.

So guess what, I don't market that agency for the next three or four years until the next contract comes up. What it's done -- it's forced us small businesses out of the market on all of this work.

What happens is that these federal agencies have three or four contractors that they just put on the list. We're going to issue a task order. Guess what? All of these small guys are just not getting access to this because the bigger boys are working on it, and then if you are a sub, you've got to rely on the good faith of that bigger company to actually give you some work.

I guarantee you that most of these big companies don't need us at all. They've got everything and they'll squeeze you as much as possible. You're going to get peanuts out of them.

So these IDIQ contracts are basically bundling. They're allowing these federal agencies to basically keep the competition in these few who are able and fortunate enough to get it. Whereas a ton of the small businesses out there --

(Tape interrupted)

**MR. OLSON:** (Inaudible) an agency feels good enough about you, they can actually sole source that work to you and it eases their contracting mechanism. If you don't (inaudible) your agency, I guarantee you're not going to get an 8a contract because they want to know who they're dealing with. Okay? It's

just very, very silly.

The 8a program particularly has some major issues in general, and I'm going to start with the bigger stuff, and then I'll kind of move down to some personal issues with it.

The 8a program -- there are two categories, there are tribal 8a businesses and there are, what we call, individual-owned 8a businesses in this region.

The tribal businesses are held to different standards than the individual businesses in the amount of money they can procure. They can procure billions of dollars. The largest contract an individual can procure, at least in my industry, is like three million, if I understand it. And they're allowed to re-certify. They say they're not, but they are. And (inaudible). What happens is that you're in this for nine years, then you're out, you're not allowed to re-certify.

Okay, the tribal businesses, through the politics -- and I mean this is a big issue. You know, when you deal with the tribal entities in particular, there are a lot more issues (inaudible). So, they're allowed to re-certify, and they keep going on in the program.

What's happening with the result of these tribal businesses -- there's S&K Technology that I think just got a some-odd billion contract with DOE. These tribal businesses are really, really backed by big business. These guys come in and they hide behind them and then they build these big businesses.

But the federal agencies, now that these tribes are allowed this endless cap of finances, are helping them meet their goals more readily.

So what's happening is that these tribal entities/big businesses are meeting the goals, so now the federal agency doesn't have to go to the little guy over here -- he's an 8a. Well our objectives are met because we've got this big contract here. The tribal 8a's are taking over operations on all the Air Force bases, environmental services -- it's just going on and on.

My gripe about that is they need to have their own category. Because whether they divide those quotas between the 8a program and say, all right, we're going to --you have to do much percentage of tribal and then the independents. We have to have some sort of delineation or they're going to nullify the whole 8a program before long. I mean it is absolutely -- it's a double standard against the small individuals who want to become 8a certified.

Secondly, the recertification. This is where my personal

issue has come in. My father was an 8a contractor in the 8a program, as an architectural engineer. He was governed by the Brooks Act, which they had to compete -- it was just something that really -- he never got this much work. One percent of his business ever, over that period, was 8a. Very, very much a disservice.

I came back a little over five years ago. I was working in the oil and gas industry, looking for an opportunity to start an environmental consulting firm.

Looking at the resources and the competition out there, I said, I can't do this on my own. I was capital hungry and used capital -- and so, you know, dad had seen opportunities in the industry -- the environmental -- and he says, why don't you come back and start an environmental division in my company?

I've got an established company, I've got a good reputation. It will be a start for you. When you get to a point that that environmental division is able to break off, then you'll have a start. Dad was helping me out.

Dad didn't do the kind of work I did. Most of the time there was a conflict of interest between what I did -- if I was to work on the same kind of project that he does. And we wouldn't sub-contract.

So anyway we build this business. I took it by myself to nine full-time employees, over a million dollars a year when we built my business up.

I had worked with this regional SBA office for many years under my father's 8a, and they knew us well. They knew our intent but we're going through the 8a application process.

Right now we're at a point -- I have 45 days to submit a clarification or I'm going to be denied because they're telling me I'm just an extension of my father's business.

And we went through the process. And let me tell you, if you read our application and everything, they're just picking on us. I mean they're holding us to a total, separate standard.

I guarantee you there are many businesses that can't even hold a candle to what our potential is that has been certified -- haven't been made to follow through the whole thing.

So what I'm asking SBA to do, right now, is that -- I'm tired. I've responded enough to that regional office. I'm asking you guys to go in there and look at this 8a application and -- because these guys know we're not a front.

But the 8a program has some major, inherent problems right now. Why do I need the 8a? Because of these IDIQs and this GSA schedule, I have no access to markets. (Inaudible) told me the



same thing. They said, don't even come in to my office and talk to me unless you have a contracting (inaudible). Hey, that's tough on a business trying to make a go (inaudible). (Inaudible).

(Applause)

**MR. SORUM:** See why Darryl's my new best friend. When I came to Montana, the first meeting Michelle set up for me was about an hour and a half with Daryl. He started to go through this stuff, and I said, well, what I'd like you to do is wait until last -- which I did. I'd like you to talk about all the issues, because I can take them back to each agency -- including the SBA. I have no hesitation in walking into the 8a office and getting them to --

**MR. OLSON:** I just want to say one thing in addition to that. Why did I ask to meet with you? Because I'm scared of retribution, to be quite honest with you. That's the reality. He's such a smooth talker.

(Laughter)

**FEMALE SPEAKER:** It's not going to happen.

**MALE SPEAKER:** It's not going to happen.

**MR. SORUM:** Not to worry.

**FEMALE SPEAKER:** Not to worry.

**MR. SORUM:** Darryl, let me give you one item for clarification. You mentioned contract bundling, which is a big issue. I met with the chief procurement officer at the Corps of Engineers. She informed me that it is no longer a problem because they're (inaudible) contract bundling. However, they will continue to do "smart consolidations."

(Laughter)

**MALE SPEAKER:** (Inaudible) we know that (inaudible).

**MR. SORUM:** Okay, that's the list of people that I had that wanted to testify. Is there anybody else in the room that has an issue that's come to mind that they'd like to bring to our attention before we close this session?

If not, I want to thank all of you for taking the time out of your busy day to come here. I want to thank the federal agency representatives for being here. I want to thank Michelle, and (Inaudible), and Mick for all the support they've given the National Ombudsman's Office in making this happen.

And remember, we're there and if you run across anybody who needs our help, including Daryl. All they have to do is e-mail us, call us, or do whatever, and we'll do our best to get an

answer. Thank you very much.

(Applause)

(Whereupon, the foregoing proceedings concluded)